

Attorney Dkt. No. 15155
Serial No. 09/627,166
Filed: July 27, 2000

REMARKS

Upon entry of this response, claims 1, 4-7, 10 and 12-14 are pending in the application. Claims 1 and 6 are independent claims drawn to an apparatus for producing asphalt pellets with claims 4 and 5 depending from claim 6, while claims 7 and 10 are independent claims drawn to a method for producing asphalt pellets with claims 12-14 depending from claim 10.

Claims 1, 7, and 14 stand rejected under 35 U.S.C. 102(a) as being anticipated by "New Pelletizer Makes Higher-Value Fuel From Resid," Oil & Gas Journal, April 17, 2000.

Rejection of Claims 1, 7 and 14 Under 35 U.S.C. 102(b)

Claims 1, 7 and 14 stand rejected under 35 U.S.C. 102(a) as being anticipated by "New Pelletizer Makes Higher-Value Fuel From Resid," Oil & Gas Journal, April 17, 2000 for the reasons set forth in the Office Action.

RESPONSE

Applicant respectfully traverses this rejection and respectfully requests reconsideration and withdrawal thereof.

In response to the rejection of claims 1, 7 and 14, Applicants submit herewith two declarations under 37 C.F.R. 1.131 made by two of the inventors, swearing behind the reference relied upon by the

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Examiner. When the reference is not a statutory bar under 35 U.S.C. 102(b), (c), or (d), Applicant can overcome the rejection by swearing back of the reference through the submission of an affidavit or declaration under 37 C.F.R. 1.131. *In re Foster*, 343 F.2d 980, 145 USPQ 166 (CCPA, 1965).

Applicants submit herewith declarations under 35 C.F.R. 1.131 signed by Philip Rettger and J. Robert Friday, two of the inventors. The third inventor, Yoram Bronicki has been out of the country and unavailable to execute a similar declaration.

As can be seen by the enclosed Declarations and exhibits attached thereto, the inventors had conceptual basis for the claimed invention prior to the publication date of the article relied upon by the Examiner. In particular, the exhibit attached to each declaration indicates the formation of the pellets, the formation of the slurry and the transportation thereof, all of which is included in the independent claims currently under consideration in this application. Further, each declaration sets forth reduction to practice of an apparatus in accordance with claims in Israel, also prior to the publication date of the reference relied upon by the Examiner. Thus, Applicants respectfully submit that conception of the claimed invention predates the Oil & Gas Journal, and thus the claims are not anticipated by the article.

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Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

2. Allowed Subject Matter

The Examiner has indicated that claims 4, 5, 6, 10, 12 and 13 are allowed, for which the Applicants are grateful.

CONCLUSION

In view of the foregoing, applicants respectfully request the Examiner to reconsider and withdraw the all pending rejections, and to allow all of the claims pending in this application.

If the Examiner has any questions or comments regarding this matter, he is welcomed to contact the undersigned attorney at the below-listed number and address.

Respectfully submitted,

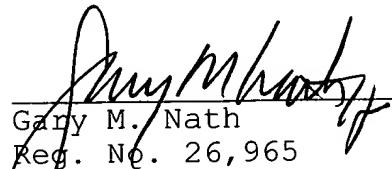
NATH & ASSOCIATES

Date:

June 10, 2003

NATH & ASSOCIATES

1030 Fifteenth Street, N.W.
Sixth Floor
Washington, D.C. 20005
Tel: (202) 775-8383
Fax: (202) 775-8396
GMN:JLM:sv/roa2.wpd



Gary M. Nath
Reg. No. 26,965
Jerald L. Meyer
Reg. No. 41,194
Customer No. 20529